THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.5399 OF 2005

DATE: 04th July 2006

Between:

1. Dasari Babu Rao, son of Anjaiah,
   aged 42 years, resident of Puligadda,
   Avanigadda Mandal, Krishna District
   and 3 others.

…. Petitioners.

And

1. The DistrictCollector,
   Krishna District, Machilipatnam
   and 17 others.

…. Respondents.

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ORDER:

This writ petition is filed seeking writ of Mandamus declaring action of the respondents in issuing proceedings Rc.No.2951/2002/C, dated 01.03.2005, superseding the Managing Committee of Sri Vijaya Bhaskara Co-operative Collective Farming Society Limited, Puligadda, Avanigadda Mandal, Krishna District, and appointing a Special Officer to the said society, as wholly arbitrary, illegal and violative of Article 14 of the Constitution of India; and consequently to declare that the petitioners are entitled to continue in the Managing Committee of the society till their term is over.

2. It seems elections to the 5th respondent society-Vijaya

Bhaskara Co-operative Collective Farming Society Limited, Puligadda, were held on 03.8.2003. In all, the members were to elect 12 directors and one president. It is unfortunate that only 4 nominations came for the post of director and one application for the post of president and they were elected as president and directors. Thereafter one of the directors passed away. Thus, in all, three directors and one president remained on the rolls. Since the respondents did not hand over the records of the society and did not permit them to discharge their duties, the petitioners filed W.P.No.22356 of 2003 before this Court and this Court allowed the writ petition on 19.01.2004 holding that once a committee has been elected, the question of appointing or continuing a person in-charge does not arise. Section 32 of the Andhra Pradesh Co-operative Societies Act (hereinafter referred to as 'the Act') provides for conducting of general meetings, the steps to be taken where the Government or the Registrar comes to the conclusion that it is not possible for the committee to function etc., The circumstance under which only four members came to be elected is not before this Court. The Act is also silent as to what should happen to the elections as a whole in case few vacancies are not filled up. In the normal parlance, wherever an elective post is not filled up, by-elections are to be held for filling of such vacancies. The fact that some vacancies were not filled up cannot constitute a ground to nullify the election of otherwise validly elected persons and directed the respondents to handover the records to the petitioners. The records were handed over to the petitioners. But again the present impugned proceedings dated 01.03.2005 is

passed purported to be while invoking power under Section 34(1) of the Act superseding the elected body and appointing a Special Officer.

3. As noticed above, the Act is silent as to what should happen to the elections in case few vacancies against which no one has come forward to contest. Learned Government Pleader appearing for the respondents says that in the absence of any provision for conducting elections to the remaining vacancies, the only course available for the respondents is to invoke Section 34(1) of the Act and to supersede the committee. Whereas, learned counsel for the petitioners states that under Rule 22-A (5)(b) any vacancy other than the president that may arise due to non-filing of nominations or any casual vacancy that may arise during the term of office, shall be filled up by co-option by the member of the committee since the members of the committee are available they are at liberty to adopt filling up the remaining members by co-option. Learned Government Pleader states that it is not a committee since there is no quorum available. The quorum for a meeting of the committee shall be majority of the total members of the committee. In this case since there are 13 vacancies, 7 is the required quorum. Since all the elected members are only quorum including president, there was no quorum, therefore, they cannot transact any business including co-opting members under Rule 22-A (5)(b) of the Act.

4. Be that as it may, in a case like this the dispute can be resolved only by invoking extraordinary jurisdiction under Article

226 of the Constitution of India and directing the authorities for conducting election to the unfilled vacancies, including the vacancies which are purported to have filled up by co-option members, by way of calling for general body as per bye-laws of the society within a period of two months from today on the basis of voters list as was available as on 03.8.2003, since there is some dispute as to enrolling of members and the same is subject matter of writ petition pending before this Court. However, the elected members shall have period of office only up to 02.08.2008.

5. The writ petition is accordingly disposed of. No costs.

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C.V.RAMULU, J.

Date: 04th July 2006.
BSB